STATE AND OFFICIAL LIABILITY.

IN the sixth edition[1] of Mr. A. V. Dicey's interesting volume, commonly called "Dicey on the Law of the Constitution," but whose full title is "Introduction to the Study of the Law of the Constitution," is found a chapter[2] entitled "The Rule of Law Contrasted with Droit Administratif." This title suggests that the *droit administratif*, which is in this manner contrasted with the rule of law, must be something lawless and arbitrary; that the words *droit administratif* cannot be used in the sense in which we employ the term "administrative law," but rather must signify some sort of administrative right or might, the word *droit* being employed much as in the motto "Dieu et mon droit." Examination of the subject matter of the chapter, however, shows that the term is intended to be used in the same sense as the French legal writers employ it, and that the chapter is devoted to an exposition of the general doctrines of French administrative law, and a statement of Mr. Dicey's view of those doctrines, which is, to say the least, not favorable.

Mr. Dicey is an author of such deservedly high reputation, and his statements naturally carry such weight with both English and American readers, that an unfavorable opinion expressed by him regarding the doctrines of French administrative law is calculated to exercise material influence on opinion as to the advisability of the study of that law, — a study which is attracting more and more attention in this country, especially since the publication of Professor Goodnow's able work on Comparative Administrative Law.

It is therefore important to examine Mr. Dicey's exposition of the doctrines of French administrative law, and to direct attention to those points, if any, wherein that exposition seems imperfect or likely to mislead.

After stating[3] that the words "administrative law," which are the most natural rendering of the term *droit administratif*, are unknown to English judges and counsel and are in themselves hardly intelligible without further explanation, Mr. Dicey describes[4] the meaning of the term *droit administratif* as "that portion

[1] 1902. [2] No. XII. [3] P. 323. [4] P. 326.

of French law which determines (1) the position and liabilities of all state officials, and (2) the civil rights and liabilities of private individuals in their dealings with officials as representatives of the state, and (3) the procedure by which these rights and liabilities are enforced"; and a further paragraph on the same page shows that the rights of an individual in reference to the state, as well as in reference to officials representing the state, are also included in Mr. Dicey's understanding of the term *droit administratif*.

From this description or definition two things appear: first, that this *droit administratif* is law — French law, to be sure, but still law — according to which certain rights and liabilities are determined; second, that these rights and liabilities are the same as those which have in this country been considered to be so separate and distinct from ordinary rights as to make desirable their separate treatment and study. The latter appears from the fact that a volume dealing with the rights and liabilities of public officers has been published and is widely used and cited in this country; and this same heading, as a distinct title of the law, is also to be found in the English digest.

Considering these matters, we may, after reading Mr. Dicey's definition of *droit administratif*, approach that subject with less apprehension than his introductory statements would be likely to create, especially his preliminary statement[1] that "this scheme of so-called administrative law is opposed to all English ideas," and with a feeling that we may find in the *droit administratif* of France a division of the law which to a certain extent we have already recognized.

After thus defining *droit administratif*, Mr. Dicey alleges[2] that any one who considers its nature with care, "or the kind of topics to which it applies, will soon discover that it rests at bottom on two leading ideas alien to the conception of modern Englishmen."

> "The first of these notions is that the government, and every servant of the government, possesses, as representative of the nation, a whole body of special rights, privileges, or prerogatives as against private citizens, and that the extent of these rights, privileges, or prerogatives is to be determined on principles different from the considerations which fix the legal rights and duties of one citizen towards another. An individual in his dealings with the state does not, according to French ideas, stand on anything like the same footing on which he stands in dealings with his neighbors."

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[1] P. 322. [2] P. 327.

The statement contained in this paragraph I believe to be in the main correct; and I have no intention of questioning the accuracy of Mr. Dicey's statement that this notion is alien to the conceptions of modern Englishmen. But if he means to suggest, and it seems to me that this is his meaning, that this notion is alien to the conceptions of modern Englishmen because it is not recognized by the law of England, or, in other words, that by the law of England the existence and extent of the rights, privileges, and prerogatives of the government as against private citizens are to be determined on the same principles and the same considerations which fix the legal rights and duties of one citizen towards another, he has evidently misapprehended the law of England.

A few elementary cases will serve for illustration.

A peace officer without a warrant arrests M. on suspicion of having committed a certain felony. A private citizen without a warrant arrests N. on suspicion of having committed the same felony. In fact, no such felony had been committed by any one. M. brings suit against the officer, and N. brings suit against the citizen who arrested him. The principles which govern in the action brought by M. are not the same as those brought by N.,[1] and Mr. Dicey certainly would not contend that the officer's liability to M. was to be determined by the same rule as that of the private citizen to N.

Furthermore, is it not "true, that in cases of grants by the Crown, they are construed favorably for the Crown, and that the usual rule for the construction of grants as between subjects is inverted"?[2]

An English man-of-war, owing to the negligence of her commanding officer, runs into and damages a vessel owned by a private individual. If the offending vessel had been owned by a private individual, she might, and in certain cases her owner might, have been sued for the injury caused by the neglect of her commanding officer. In an action against a vessel of the state the only remedy the English and American law recognizes is a suit against the commanding officer. Finally, what right of action against the state or the crown has the private citizen in England? Has he any other remedy than that given by the petition of right, which is a peculiar form of procedure, and is it not well settled

[1] Samuel *v.* Payne, 1 Doug. 359.

[2] Attorney-General *v.* Ewelme Hospital, 17 Beav. 366, 388.

that no petition of right can be maintained when the claim against the state is based on the tortious act or omission of a servant of the crown?[1]

Then there is the Public Authorities Protection Act, 1893,[2] giving to the public official in England when sued by a private citizen the benefit of a special (six months) period of limitation, and penalizing the citizen who may have been unsuccessful in such suit, by the imposition of costs taxed as between solicitor and client; and the long schedule of repealed acts appended to this enactment shows how numerous have been the instances in which English law has given to the public official a protection against suits which the private citizen does not enjoy.

It would seem, therefore, that, if true of France, it is also true of England, that the extent of the rights, privileges, or prerogatives of the government as against the private citizen is to be determined on principles different from the considerations which fix the legal rights and duties of one citizen towards another; and it is also true of England, as well as of France, that an individual in his dealings with the state does not stand on anything like the same footing that he does in dealing with his neighbors, and one must conclude that if this notion is alien to the conceptions of modern Englishmen, it can be only because of their lack of familiarity with the law of their own country.

Mr. Dicey is, of course, aware of these matters. Indeed he expressly refers to some of them,[3] namely, the petition of right and the enactments protecting public officials from suit, as "faint traces in the law of England of" some such principle as "the idea that when questions arise between the State or, as we should say, the Crown, or its servants and private persons, the interests of the government should be in any sense preferred or the acts of its agents claim any special protection." They are, however, but "faint traces," so faint as to make no impression on the minds of Englishmen, who apparently, according to Mr. Dicey, in spite of these rules and enactments, still cling to the delusion that in their dealings with the crown and with public officials they stand on the same footing that they do in dealings with their neighbors.

The fact that an individual in this country does not in his dealings with the state stand on anything like the same footing on

[1] Canterbury *v.* The Attorney-General, 1 Phil. 306; Tobin *v.* Queen, 16 C. B. N. S. 310.

[2] 56 and 57 Vict., c. 61.

[3] P. 341 note.

which he stands in dealings with his neighbors, is too well known and recognized to require any citation or authority in its support. The well-known exemption, both of the United States and of the several states, from suits by their citizens, except by their express consent, given only by their legislative departments, is perhaps as striking an instance of it as any, and equally well known is the limited extent to which such consent has been given.

The first of the ideas, then, on which the *droit administratif* of France rests is one which is familiar to every lawyer in this country, and should, one must suppose, be no novelty to those of England.

"The second of the general ideas, on which rests the system of administrative law, is the necessity of maintaining the so-called separation of powers," according to Mr. Dicey,[1] or, as we should phrase it, the necessity of maintaining the proper division of the powers of government into legislative, executive, and judicial.

We can readily understand how this idea would be alien to the conceptions of modern Englishmen, whose idea of a constitution may be supposed to be the so-called constitution of Great Britain; but to us Americans, in whose written constitutions this doctrine of the separation of the powers of government has found such marked expression, and with whom it is to-day a recognized doctrine, politically observed and judicially enforced, the idea will not be unfamiliar. This is not to say that we necessarily make the same application of the doctrine, or deduce from it the same conclusions as do the French, any more than it follows that because we too recognize that a state in its dealings with its citizens should not be governed by the same rules as govern the relations of those citizens with one another, we necessarily have the same conceptions as they have of what should be the proper rules of law governing the relations of the state and its officials to the private citizen; I contend only that the idea of special and peculiar rules to govern those relations, and that of the necessity of the separation of the powers of government, are certainly not strange to us, and that a theory of administrative law which is based on these ideas rests in substance on bases which we also have recognized and adopted.

Let us next examine whether Mr. Dicey's exposition of the *droit administratif* is, in the main, an accurate one, — not neces-

[1] P. 328.

sarily one of absolute accuracy of detail, for it would be unfair to demand such accuracy in a statement which purports to set forth only the general principles of the subject, but simply whether or not it is one of substantial accuracy in the statement of those general principles.

Mr. Dicey remarks[1] that the second of the leading characteristics of French administrative law is "that the ordinary tribunals have, speaking generally, no concern with any matter of administrative law." It is perhaps ungracious to quarrel with a statement guarded by the phrase "speaking generally"; but in view of the definition of administrative law which Mr. Dicey has already given, the statement appears to me to be inaccurate and likely to mislead, even after giving all due effect to the phrase "speaking generally."

It must be remembered that among other things which administrative law includes are the civil rights and liabilities of private individuals in their dealings with the state and with officials as representatives of the state; and as in France a fairly large part of those dealings falls within the jurisdiction of the ordinary courts, and is governed in many cases by no special and peculiar rules, it seems to me that attention should be called to this feature of the French law, in correction of Mr. Dicey's general statement.

For instance, Mr. Dicey says:[2]

> "If a Minister, a Prefect, a policeman, or any other official, commits acts in excess of his legal authority, as, for example, if a police officer in pursuance of orders, say from the Minister of the Interior, wrongfully arrests a private person, the rights of the individual aggrieved and the mode in which these rights are to be determined is a question of administrative law."

It is not quite clear just what idea the learned author meant to convey by this statement. It may be intended simply as an example to illustrate the definition of administrative law which just precedes it, and if so, is unobjectionable, as no one denies that administrative law does include the rules according to which such rights are determined. But the author probably intended by it to convey the further idea that those rights, etc., were to be determined in some other way than by the ordinary course of law and in the ordinary courts.

A note to that page, in which Mr. Dicey takes pains to dis-

[1] P. 329. [2] P. 326.

tinguish between two classes of acts of officials, for one class of which they are suable in the ordinary courts while for the other the only remedy of the person aggrieved is by suit against the state in the administrative courts, indicates that when he wrote the statement above referred to, he was under the impression that in stating that certain rights and the mode in which those rights are to be determined is a question of administrative law, he was stating in substance that those rights could form the subject of a suit in the administrative courts only, and the statement has been frequently understood as having that meaning.

That Mr. Dicey believed, when he wrote this chapter, and intended that his readers should believe, that the only remedy given in France to a private individual aggrieved by the illegal act of an official was by suit in the administrative tribunals, clearly appears from this further statement of his: [1]

"The assertion, however, that where an official in the discharge of his official duty injures a private individual, the person wronged cannot claim redress from the ordinary judges, does not mean or imply that a person who is thus aggrieved, say who is wrongfully arrested by a policeman acting under orders, or libelled in an official notice issued by a mayor, is without a remedy. The incompetence of the civil tribunals means, only, that, where any wrong has been done through an official proceeding, redress must be sought through the proper official authorities, or, as they are called, the administrative tribunals (*tribunaux administratifs*)."

As these statements are hopelessly at variance with the decisions of the courts, it seems proper to direct attention to their incorrectness.

Let us take the typical case put by the learned author, that of the wrongful arrest of a private person by a police officer in pursuance of orders from the Minister of the Interior.

In the first place, violation of the rights of personal liberty committed by a public functionary is a crime.[2] The administrative courts have no criminal jurisdiction, except for certain petty offenses relating to highways, therefore the penal liability could not be enforced in the administrative courts. Persons accused of crimes are tried in the assize courts, which are judicial tribunals and not administrative ones.

It is true that a minister may, by process analogous to our impeachment, be placed on trial before the Senate by the Chamber

[1] P. 330.

[2] Code Penal, Art. 114.

of Deputies for crimes relating to his functions, but Mr. Dicey would probably not contend that in such case the Senate was an administrative court.[1]

As to the civil action for damages to which the private individual might be entitled in such case, whether in connection with the criminal prosecution or independently thereof,[2] this also would be triable in the judicial courts, — either the assize court in case it was made part of the criminal proceedings, or in the ordinary civil courts in case it was instituted independently thereof.

Let us illustrate this doctrine of the jurisdiction of the ordinary courts in such cases by a few actual decisions.

A prefect who had caused a private individual to be arrested (and as to the lawfulness of the arrest no question was made) was held personally liable to the person arrested for having illegally prolonged the detention of the prisoner, and this liability was enforced by suit in the ordinary courts, and the judgment against the prefect was upheld by the Court of Cassation.[3] Suits against minor officials for illegal arrest or detention have frequently been maintained in the ordinary courts. But perhaps the most instructive case is that of Usannaz-Joris *c.* Prefect de la Savoie,[4] in which a prefect was held personally liable in damages in a suit in the ordinary courts for having seized political circulars intended to aid in re-establishing the monarchy in France. Although this was a case of illegal seizure of the property and not of the person of the plaintiff, it presents these features of special interest, — that the act of the prefect was done pursuant to the express orders of the Minister of the Interior, whose conduct in the matter was later approved by vote of the Chamber of Deputies and that the decision upholding the competency of the ordinary courts was rendered by the Tribunal des Conflits, whose members, as Mr. Dicey tells us,[5] are "inclined to consider the interest of the state, or of the government, more important than strict regard to the legal rights of individuals."

The opinion of the Tribunal des Conflits, holding that the regular courts had jurisdiction of the action for damages brought against the prefect, states expressly that the character of the seizure was not altered by the fact that it was ordered by the Minister of the Interior for a political purpose, and that if the government

[1] Const. Law, 16 July, 1875, Art. 12.
[2] Code Penal, Art. 117.
[3] Valentin *c.* Haas, Dalloz, 1876, I. 289.
[4] Dalloz, 1890, III. 65.
[5] P. 334.

has the duty of ensuring the safety of the state and putting down any attempt to overthrow the republic, it is not invested for this purpose with any powers except those conferred by law. Such a decision certainly bears no indications of having emanated from a court whose members were "inclined to consider the interest of the government as more important than strict regard to the legal rights of individuals."

At the same place in the report may be found the decisions in the suits against the Prefect of Police of Paris and the Prefect of le Loiret, for the recovery of the property seized by them pursuant to the same directions of the Minister of the Interior, and in which the same doctrine is affirmed.

In view of these three decisions it is difficult to understand how Mr. Dicey can state, as he does,[1] that "we may further draw the general conclusion that under the French system no servant of the government who without any malicious or corrupt motive executes the orders of his superiors, can be made civilly responsible for his conduct."

That the orders of the Minister of the Interior are no protection to an official when prosecuted for violation of a provision of law having a penal sanction, appears from the case of Vincent *c.* Fosse,[2] also decided by the Tribunal des Conflits, upholding the jurisdiction of the Tribunal Correctionnel of Rheims to sentence and fine an under prefect and two policemen for defacing the election posters of General Boulanger, although the prefect showed that what they had done was by his direction and pursuant to orders received from the Minister of the Interior.

Our author's statement in regard to the other case he mentions, that of "a libel in an official notice issued by a mayor," would seem also to be inaccurate. Here, again, the Tribunal des Conflits, whose members, as Mr. Dicey tells us,[3] "are swayed by official sympathies," has decided that the mayor may be held personally liable for such a libel at the suit of the person aggrieved brought in the ordinary courts.[4]

The foregoing decisions would seem to establish the ability of the members of that high tribunal to overcome in certain cases both their inclination to favor the government and their official sympathies.

So much for suits against officials personally. As regards those

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[1] P. 339. [2] Dalloz, 1891, III. 31 [3] P. 334.
[4] Lalande *c.* Peynaud, Dalloz, 1899, 3. 93.

against the state, we find that for nearly a century the taking of land for public purposes by right of eminent domain, and the assessment of damages for such taking, has been entrusted to the judicial tribunals. This includes what is known as indirect taking, *i. e.*, "where administrative acts have for their indirect result the dispossession of an owner for the benefit of the administration." [1] Furthermore, all rights and liabilities of the administration or state as owner or manager of its private estate are (unless they relate to public works) decided by the ordinary courts and according to the rules of their common law. An interesting instance of the liability of the state, as owner of buildings belonging to its private estate, is found in the case of Dessauer *c.* The State,[2] in which an action was maintained in the ordinary courts against the state as owner of the theater known as the Opera Comique for loss of life occurring when that building was burned.

We thus see that there are many matters which fall within the definition of administrative law given by Mr. Dicey, which are in France within the jurisdiction of the ordinary tribunals. Furthermore, Mr. Dicey says,[3] that the ordinary judges are incompetent to pronounce judgment on any administrative act, that is, on any act done by any official, high or low, *bona fide* in his official character, and "that the judges cannot pronounce upon the legality of decrees issued by the President of the Republic."

That these statements are inaccurate appears from the right, possessed by the ordinary courts in France, of passing upon the legality of regulations or ordinances made by the administrative authority, whether mayor, prefect, or head of the state. The ordinary courts in France have not the power of annulling such regulations and ordinances, any more than our courts in this country have the power of annulling or cancelling unconstitutional laws. That power in France is possessed only by the highest administrative tribunal, the Council of State, but the ordinary courts have the power of refusing to enforce all such regulations and ordinances, or give effect to them, if, when their meaning is clear, the courts deem them unauthorized or illegal — much the same power as that possessed by our courts regarding unconstitutional laws. So that it would seem that many matters which clearly fall within Mr. Dicey's definition of administrative law are, in France, within the

[1] 1 Laferrière 542.

[2] Dalloz, 1899, II. 289; s. c. (Cas'n) Dalloz, 1902, I. 372.

[3] P. 330.

jurisdiction of the ordinary courts, and are therefore not within the jurisdiction of the administrative courts; and this fact is entirely ignored in his chapter.

His statement regarding the administrative courts and their functions appears to be open also to a somewhat analogous criticism. Whether or not his exposition of the character and composition of these courts be a correct one may perhaps best be judged from an examination of his statements regarding the Tribunal des Conflits, the court which is charged with the duty of deciding whether a given matter falls within the jurisdiction of the ordinary courts or that of the administrative ones.

A correct conception of the composition of that court is the more important as, according to Mr. Dicey,[1] the true nature of administrative law depends in France upon the constitution of the Tribunal des Conflits. He thereupon poses the question, "Is this tribunal a judicial body or an official body?"

Apparently, if this Tribunal des Conflits is judicial, so also is French administrative law; but if it prove to be an official body, then also must administrative law in France be deemed official. Mr. Dicey hesitates to give a decisive answer to his question. Evidently that "tribunal" has certain claims to be considered a judicial tribunal, though Mr. Dicey does not inform us what these claims are, but gives, however, as his conclusion, "that, subject to the hesitation that becomes any one who comments upon the effect of institutions which are not those of his own country, an observer may assert with some confidence that the Tribunal des Conflits is at least as much of an official as of a judicial body." If, then, Mr. Dicey's previous statement is borne in mind to the effect that "the true nature of administrative law depends in France upon the constitution of the Tribunal des Conflits," it would seem to follow that the same conclusion must be formed regarding the nature of administrative law, namely, that it is "at least as much official as judicial." This, however, is not the conclusion which he draws. According to him,

> "It follows therefore that the jurisdiction of the civil tribunals is, in all matters which concern officials, determined by persons, who, if not actually part of the executive, are swayed by official sympathies, and who are inclined to consider the interest of the state, or of the government, more important than strict regard to the legal rights of individuals."

[1] P. 333.

This is the statement to which reference has already been made, when considering the decisions of that tribunal holding prefects and others liable for having infringed the rights of the private individual, though their acts were committed at the behest of the Minister of the Interior. As a conclusion, it does not seem to follow from his premises, and if we examine what the facts are regarding the composition of the Tribunal des Conflits, the conclusion will, I think, appear the more surprising.

The President of the Tribunal des Conflits is the Minister of Justice, *ex officio*. The remaining members are chosen, one-half from the Council of State and one-half from the judges of the Court of Cassation, which in the appendix[1] Mr. Dicey refers to as the "highest civil court in France."

Does not Mr. Dicey's statement regarding the Tribunal des Conflits ignore entirely the fact that one-half its members are taken from the "highest civil court in France," and could he have made, with any show of plausibility, the assertion above quoted, had he disclosed that fact?

This brings us to the matter which is perhaps of most importance in forming any judgment regarding the administrative law and administrative tribunals of France, and the entire omission of any reference to which from Mr. Dicey's chapter seems to me its greatest defect.

That matter is this, that as a complement of the exemption from suit enjoyed by government officials in France on account of acts, even negligent and improper ones, within the limits of their functions, the state itself in many cases is held to be liable and may be sued by the private citizen who claims to have been injured by such negligence, or improper act, of the government official. No comparison between the law of England and the administrative law of France can be considered as fair, which directs attention solely to the exemption from suit enjoyed by certain government officials in France, an exemption which similar officials do not enjoy in England, and fails to mention the right of the citizen in France to sue the state for the act of that official, a privilege which the private citizen does not enjoy either in England or in this country. Among the leading cases on this point are the well-known Laumonnier-Carriol decisions.

In 1872, in order to perfect its monopoly of the manufacture of

[1] Appendix 495.

matches, the French government had been given the power of acquiring by right of eminent domain the existing match factories. It occurred to the Minister of Finance that if there were any way of closing these factories and stopping their operation instead of taking them, quite a sum might be saved to the state, as such closing, if it could be maintained, would answer every purpose of the state and avoid the necessity of any payment. Recalling that the prefects had certain police powers over such factories, he directed them to close certain of them, ostensibly for sanitary reasons, but actually for the purpose of saving money for the government. A prefect made such an order regarding the plaintiff's factory, but on appeal to the Council of State, his order was annulled on the ground that he had used his power improperly.[1] An action was then brought before the judicial tribunals by the owner of the factory against the prefect and the Minister of Finance, pursuant to whose direction the prefect had acted. This action was held not to be maintainable, on the ground that the action was in reality brought against the state in the person of its agents, and that such an action fell within the jurisdiction of the administrative tribunals.[2] An action was then brought against the state, and 53,500 francs damages awarded to the owner for the loss of profits during the illegal closing of the factory by the order which had been annulled, and this in addition to the damages which he received on the taking of the factory by the state.[3]

There are many other instances of a liability imposed on the state in France, not by statute, but by the "case law" of the Council of State, in cases where, by the law of England and of the United States, no such remedy would be given the person injured. Among these may be mentioned the liability of the state to make good injuries received by vessels, owing to neglect of harbor authorities to mark properly the dangers to navigation, and the liability to indemnify the owners of vessels injured by collision with government vessels through the negligence of the officers of the latter.

The foregoing examples are by no means all of the statements in Mr. Dicey's chapter which to the writer appear calculated to give an erroneous impression of the administrative law of France

[1] It is worth noting in this connection that an attempt to have a similar order held invalid by the judicial tribunals, including the Court of Cassation, had failed. Dalloz, 1875, I. 495.

[2] Dalloz, 1878, III. 13.

[3] *Ibid.*, 1880, III. 14.

and to call for correction; but enough has perhaps been said to serve the purpose of this article, namely, to bring to the attention of those interested in the matter the danger of accepting Mr. Dicey's exposition of the subject as correct.

No better confirmation of this view could be had than that afforded by Mr. Dicey's own explanation of the error into which he was led, when he undertook the study of the subject, which explanation is found in Note X of the appendix,[1] entitled "English Misconception as to Droit Administratif," where he tells us that "the nature and the very existence of *droit administratif* has been first revealed to many Englishmen, as certainly to the present writer, by the writings of Alexis de Tocqueville, whose works have exerted in the England of the nineteenth century an influence comparable to the authority exerted by the works of Montesquieu in the England of the eighteenth century. Now Tocqueville by his own admission knew little or nothing of the actual working of *droit administratif* in his own day." This being the case, it is not surprising that Mr. Dicey's Chapter XII, as it appeared in the earlier editions, called forth protests from French lawyers of eminence, in deference to which he, as he tells us,[2] has in one or two instances modified the language of the chapter.

The matter of surprise is, rather, that, having discovered his error, and having learned that the *droit administratif* of the close of the nineteenth century which he was attempting to describe to his readers differed materially from "the *droit administratif* of 1800 or even of 1850,"[3] that De Tocqueville, from whom he had derived his view of the earlier law, "knew little or nothing of the actual working of *droit administratif* even in his own day," and, as Mr. Dicey shows us,[4] gave a prejudiced and biased account of the little or nothing he did know, Mr. Dicey should not have entirely rewritten his Chapter XII, so as to bring his exposition of *droit administratif* more into accord with the contemporary authors to whose works he refers his readers[5] for information on *droit administratif*, in which reference I find myself at last in hearty accord with Mr. Dicey.

Undoubtedly one who has any familiarity with that subject will see, in Mr. Dicey's two notes[6] in the appendix, a virtual retrac-

[1] P. 490. [2] P. 322 note. [3] P. 491. [4] Pp. 490–491.

[5] Pp. 322 note, 485 note, 492. The authors referred to are Aucoc, Laferrière, Hauriou.

[6] X and XI.

tion of most of the statements made by him in the chapter under discussion, and retained, even in its amended form, in the sixth edition, but the ordinary reader is not much aided thereby. The erroneous impression he is likely to receive from Chapter XII will probably not be removed by reading the notes in the appendix. It would certainly be preferable that the chapter should be re-written so as to embody the corrections found in the appendix, and I trust this may prove to be the case in the next edition, as I cannot believe that Mr. Dicey can regard the way in which the matter is now presented as doing justice to his present views regarding *droit administratif.*

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